

**STATE OF MICHIGAN  
IN THE SUPREME COURT  
ON APPEAL FROM THE COURT OF APPEALS  
Neff, P.J., and Wilder and Cooper. J.J.**

CENTRAL CEILING & PARTITION, INC.,

Plaintiff-Appellee

V

Supreme Court No. 121009

STATE OF MICHIGAN DEPARTMENT OF  
COMMERCE HOMEOWNER  
CONSTRUCTION LIEN RECOVERY FUND

Court of Appeals No. 225378

Defendant-Appellant

Wayne County Circuit Court  
No. 98-810597-CH

and

KITCHEN SUPPLIERS, INC.

Defendant, Cross and Counter  
Plaintiff-Appellee

and

CAPPY HEATING AND AIR CONDITIONING, INC.,

Intervener, Cross-Claimant, Counter-Claimant and  
Third Party Plaintiff-Appellee.

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**BRIEF ON APPEAL- APPELLEE**  
**ORAL ARGUMENT REQUESTED**

Muller, Muller, Richmond, Harms  
Myers & Sgroi P.C.  
By: ROY C. SGROI (P28168)  
Attorney for Appellee Kitchen Suppliers Inc.  
33233 Woodward Ave.  
Birmingham, MI 48009  
(248) 645-2440

## TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
COUNTER STATEMENT OF QUESTIONS INVOLVED.....	iii
COUNTER STATEMENT OF PROCEEDINGS AND FACT.....	1
ARGUMENT .....	2
I. M.C.L. 570.1111(1) can be satisfied by substantial compliance.....	2
A. Standard of Review.....	2
B. The Court of Appeals decision is correct and proper.....	2
C. Analysis of Substantial Compliance.....	3
CONCLUSION.....	6
RELIEF.....	7

## INDEX OF AUTHORITIES

Cases	Page
<i>Northern Concrete Pipe, Inc. v Sinacola Companies-Midwest, Inc.</i> 461 Mich 316; 603 NW 2d 257 (1999).....	passim
<i>Central Ceiling &amp; Partition, Inc. v Dep't of Commerce,</i> 249 Mich App 438; 642 NW 2d 397 (2002) .....	2
<i>Old Kent Bank of Kalamazoo v Whitaker Constr Co.,</i> 222 Mich App 436; 566 NW2d 1 (1997) .....	3
<i>Beebe v Morrell,</i> 76 Mich 114; 42 NW 1119 (1889) .....	5
<i>People v Madigan,</i> 223 Mich 86; 193 NW 806 (1923) .....	5
<i>In Re: Flagstaff Food Service Corp.,</i> 16 BR 132, (Bankr SDNY 1981) .....	5
Statutes	
M.C.L. 570.1111(1) .....	1,2,3
M.C.L. 570.1302(1) .....	1,2,3

## **COUNTER STATEMENT OF QUESTIONS INVOLVED**

**I. Can M.C.L. 570.1111(1) be satisfied by substantial compliance and if so did Plaintiff's substantially comply.**

**Trial Court answered: Yes**

**Court of Appeals answered: Yes**

**Appellee answers: Yes**

## **COUNTER STATEMENT OF PROCEEDINGS AND FACTS**

### **A. Background and Appellee Kitchen Suppliers Overview**

The matter before the Court concerns the additional interpretation of M.C.L. 570.1111(1) and the application of M.C.L. 571.1302(1) thereto. This is not a case of whether or not the Appellee's filed their liens within the 90-day requirement, it is uncontested that they did. The issue is whether or not the appellee's substantially complied with the "recording" requirement contained in M.C.L. 570.1111(1) and does that satisfy the requirements of substantial compliance as defined by the Court in *Northern Concrete Pipe, Inc. v. Sinacola Companies-Midwest, Inc.*, 461 Mich 316; 603 NW 2d 257 (1999). The Trial Court answered these questions affirmatively and the Court of Appeals did likewise.

### **B. Statement of facts and Court Proceedings**

Appellee does not take issue with any of the fact and or the Court Proceedings as stated by Appellant in their brief.

## **ARGUMENT**

**I. M.C.L. 570.1111(1) can be satisfied by substantial compliance and Plaintiff Appellee's substantially complied.**

**A. Standard of Review.**

Appellee agrees with Appellant's standard of review.

**B. The Court of Appeals' decision is proper and correct giving effect to both M.C.L. 570.1111(1) and M.C.L. 570.1302.**

As this Court stated in *Northern Concrete Pipe, supra*:

The scope of a statutory "substantial compliance" provision requires an analysis, on a case-by case basis, of the following logically relevant factors among others: the overall purpose of the statute; the potential for prejudice or unfairness when the apparent clarity of a statutory provision is replaced by the uncertainty of a "substantial compliance" clause; the interests of future litigants and the public; the extent to which a court can reasonably determine what constitutes "substantial compliance" within a particular context; and, of course, the specific language of the "substantial compliance" and other provisions of the statute.

As noted by the Court of Appeals all the liens in question here were all timely **filed and**

**accepted**, *Central Ceiling & Partition, Inc v. Dep't of Commerce*, 249 Mich App 438; 642 NW 2d 397 (2002) at 443. This is not a case where the lien claimants failed to comply with the requirements of the Construction Lien Act as they did in *Northern Concrete Pipe, supra*.

Here the Register of Deeds for Wayne County simply as a matter of their own policy deferred the actual recording of the liens until a later date [Appendix (App) 27a.]. As the Court said in *Central Ceiling, supra*, at 444, "Attributing the delays within the register of deeds office to the subcontractors, as suggested by defendant, would lead to absurd and unfair results".

This Court in *Northern Concrete Pipe, supra*, uses the terms filed and accepted interchangeably with recorded. Throughout the opinion the Court talks about ‘filed’ and ‘filing’ not recording. The reason of course is that the Court was not dealing with the recording requirement but with the 90-day requirement of the Statute. By finding that filing and acceptance of a Claim of Lien by the Register of Deeds Office, substantially complies with the requirements of the Act for recording does not offend the ruling in *Northern Concrete Pipe, supra*, as Appellant suggests. They are two distinct requirements.

The purpose of the Construction Lien Act is “(1) protecting the rights of lien claimants to payment for wages and materials, (2) protecting owners from paying twice for such services”, *Old Kent Bank of Kalamazoo v Whitaker Constr Co.*, 222 Mich App 436; 566 NW 2d 1 (1997).

M.C.L. 570.1302(1) tells us:

This act is declared to be a remedial statute, and shall be liberally construed to secure the beneficial results, intents, and purposes of this act. Substantial compliance with the provisions of this act shall be sufficient for the validity of the construction liens provided for in this act, and to give jurisdiction to the court to enforce them.

Applying the principals cited above the only logical conclusion that can be arrived at, is that filing and acceptance by the register of deeds office constitutes recording under the statute and substantially complies with the requirements of M.C.L. 570.1111(1).

### **C. Analysis of Substantial compliance.**

As identified above, an analysis of “substantial compliance” requires inquiry into several areas on a case-by-case basis.

The first inquiry is the overall purpose of the statute. As set out above the purpose is to see that subcontractors and materialmen on a construction project get paid, and to insure the owners only have to pay once. Here the owners are not an issue as they are protected by the Appellant so that

area of inquiry is not pertinent. The payment of the subcontractors and materialmen however is pertinent and to abide by the construction advocated by Appellant would prevent the subcontractors and materialmen from being paid.

The next analysis is the potential for prejudice and unfairness when the apparent clarity of a statutory provision is replaced by the uncertainty of a “substantial compliance” clause. Finding that filing and acceptance by a Register of Deeds constitutes recording within the meaning of the Statute will not cause any unfairness or prejudice. But for the failure of the Register of Deeds to do its job, this would not be an issue. The fact remains that the construction lien was and is in the office of the Register of Deeds. In fact if notice is an issue, it should be noted that lien claimants are required under the Act to serve a copy of their lien on the owners within 15 days of recording. If we are to adopt the Appellant’s theory of when recording happens, then when does the 15 days begin to run. More importantly does the lien claimant have 90 days to record their lien or is it 45 or 30? To find for Appellant would subject lien claimants to the vagaries of each Register of Deeds in every county in the State. That would cause prejudice to lien claimants and obvious unfairness and uncertainty as to the time period granted under the statute.

The public interest and the interests of future litigants would be furthered in that it would leave no uncertainty that 90 days means 90 days giving effect to the mandate of the legislature. The legislature obviously intended the 90 day time period to be meaningful. This Court has already decided that 90 days means 90 days. Why should it now determine, that lien claimants the entities who the statute was designed to protect, do not have 90 days to record their liens because it depends on the work load of a particular Register of Deeds, or even worse the particular mood of an individual working in the office on a given day. The answer of course is that it should not. It has



been the law in this State for some time that a document or paper is considered filed, or in this case, recorded, "when it is delivered to the proper office and the appropriate fee is tendered, and it is **accepted** by that officer received to be kept on file", *Beebe v Morrell*, 76 Mich 114; 42 N.W. 1119 (1889) emphasis added, or in this case, to be actually recorded. A paper or document is "filed" so far as the rights of the parties are concerned when it is delivered to and received by **the proper officer with whom it is to be filed**. See *People v Madigan*, 223 Mich 86; 193 N.W. 806 (1923) emphasis added. We also have the benefit of the reasoning and logic in, *In Re: Flagstaff Food Service Corp.*, 16BR, 132 (Bankr SDNY 1981). In that case, the secured creditor, General Electric Credit Corporation presented a financing statement, together with its check for the filing of its security interest in the accounts and inventory of the debtor to the clerk. The clerk accepted the financing statement, however, improperly indexed the document. Three years later when the secured creditor, General Electric, was forced to argue the validity of its perfected security interest, the Court held:

The secured party simply is not to bear the risk that the filing officer will not properly perform his duties. Perfection by filing occurs (i.e. upon presentation of the financing statement and tender of the proper fee, or acceptance).

The facts in that case, and the facts in the case before this Court now, are no different. A claim of lien was presented to the clerk of the Register of Deeds office for the County of Wayne with the filing fee. The document was reviewed, and contrary to the facts in *Sinacola, supra*, was not returned for an improper legal description or any other non-conformity, but was **accepted by the clerk for filing**. There was absolutely nothing else that Appellee, Kitchen Suppliers could do from that point forward. They complied with the statute, and other than going behind the counter and trying to index the document themselves with a liber and page, which would not have been possible, there was nothing else they could do.

### **CONCLUSION**

Appellee, Kitchen Suppliers Inc. complied with the Construction Lien Act in this case, and this Courts finding that filing and acceptance by the Register of Deeds constitutes recording does not offend the statute or its decision in *Northern Concrete Pipe, supra*. To decide otherwise refuses to give effect to the purpose and language of the statute. The majority opinion of the Court of Appeals is correct and should be affirmed.

**RELIEF SOUGHT**

Appellee, requests that this Court affirm the decision of the Court of Appeals and find that the lien claimants construction liens were properly perfected under the Construction Lien Act.

Respectfully Submitted,

Muller, Muller, Richmond  
Harms, Myers & Sgroi

A handwritten signature in black ink, appearing to read "Roy C. Sgroi", written over a horizontal line.

ROY C. SGROI (P28168)  
Attorney for Appellee Kitchen Suppliers Inc.  
33233 Woodward Ave.  
Birmingham, MI 48009  
(248) 645-2440

Dated: June 17, 2003